

**Introduced by Senator Huff  
(Principal coauthor: Senator Emmerson)**

February 15, 2011

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An act to amend Sections 44662, 44955, and 44956 of, and to add Sections 44955.1 and 44955.2 to, the Education Code, relating to education employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 355, as introduced, Huff. Education employment: certificated employees.

(1) Existing law requires each school district to evaluate and assess certificated employee performance as it reasonably relates to pupil academic progress, the instructional techniques and strategies used by the employee, the employee's adherence to curricular objectives, and the establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities. Existing law prohibits the evaluation and assessment of certificated employee performance from including the use of publishers' norms established by standardized tests.

This bill would delete the prohibition relating to using publishers' norms established by standardized tests in employee evaluations and assessments. The bill would authorize the governing board of a school district to evaluate and assess the performance of certificated employees pursuant to a "multiple-measures evaluation system," defined in the bill as a teacher and principal evaluation system that uses multiple research-validated approaches to measuring effectiveness, as specified. Any system developed pursuant to these provisions would be required to meet specified criteria, including a quantitative pupil academic

achievement growth component that constitutes at least 30% of the overall teacher and principal effectiveness measure.

(2) Existing law provides that when employees are terminated pursuant to a reduction in workforce, a school district is required to terminate the employees in order of seniority. Existing law further provides those employees with preferred right to reappointment and opportunity for substitute service in order of seniority. Existing law authorizes a school district to deviate from the order of seniority for those purposes for specified reasons, including compliance with constitutional requirements related to equal protection of the laws.

This bill would provide additional reasons for which a school district may deviate from terminating employees in order of seniority, including basing a decision on performance evaluations, if the governing board has implemented the provisions relating to a multiple-measures evaluation system, as described, and on the basis that the employee is assigned to a schoolsite that has been selected by the governing board for exemption from certificated reductions in force, based upon the needs of the educational program. The bill would provide an exception to this authorization for an employee who has 18 months or less from his or her date of retirement, or is on medical leave. The bill also would authorize the governing board of a school district to deviate from seniority when reappointing employees or offering employees the opportunity for substitute service on the basis of performance evaluations, as specified. The bill would specify that the equal protection exception to the general requirement that terminations and reappointments occur in order of seniority applies to equal protection as it relates to pupils.

(3) Existing law generally requires school districts to adhere to certain requirements with respect to teacher and administrator employment, and requires charter school petitions to contain certain information relating to employment.

This bill would authorize school districts, county offices of education, and charter schools to assign, reassign, and transfer teachers and administrators based on effectiveness and subject matter needs, without regard to years of service.

(4) This bill would make various nonsubstantive and clarifying changes.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 44662 of the Education Code is amended  
2 to read:

3 44662. (a) The governing board of each school district shall  
4 establish standards of expected pupil achievement at each grade  
5 level in each area of study.

6 (b) The governing board of each school district shall evaluate  
7 and assess certificated employee performance as it reasonably  
8 relates to:

9 (1) The progress of pupils toward the standards established  
10 pursuant to subdivision (a) and, if applicable, the state adopted  
11 academic content standards as measured by state adopted criterion  
12 referenced assessments.

13 (2) The instructional techniques and strategies used by the  
14 employee.

15 (3) The employee's adherence to curricular objectives.

16 (4) The establishment and maintenance of a suitable learning  
17 environment, within the scope of the employee's responsibilities.

18 (c) The governing board of each school district shall establish  
19 and define job responsibilities for certificated noninstructional  
20 personnel, including, but not limited to, supervisory and  
21 administrative personnel, whose responsibilities cannot be  
22 evaluated appropriately under the provisions of subdivision (b)  
23 and shall evaluate and assess the performance of those  
24 noninstructional certificated employees as it reasonably relates to  
25 the fulfillment of those responsibilities.

26 (d) Results of an employee's participation in the Peer Assistance  
27 and Review Program for Teachers established by Article 4.5  
28 (commencing with Section 44500) shall be made available as part  
29 of the evaluation conducted pursuant to this section.

30 ~~(e) The evaluation and assessment of certificated employee~~  
31 ~~performance pursuant to this section shall not include the use of~~  
32 ~~publishers' norms established by standardized tests.~~

33 ~~(f) Nothing in this~~

34 ~~(e) This section shall be construed as in any way limiting does~~  
35 ~~not limit the authority of the governing board of a school district~~  
36 ~~governing boards to develop and adopt additional evaluation and~~  
37 ~~assessment guidelines or criteria.~~

1 (f) (1) *The governing board of each school district may*  
 2 *additionally evaluate and assess the performance of all certificated*  
 3 *employees pursuant to the provisions of this subdivision. If the*  
 4 *governing board of a school district establishes a system of*  
 5 *evaluation pursuant to this subdivision, the system shall meet all*  
 6 *of the following criteria:*

7 (A) *The system shall define a rigorous, transparent, and fair*  
 8 *multiple-measures evaluation system for both teachers and*  
 9 *principals and shall involve the development and adoption by the*  
 10 *governing board of objective evaluation and assessment guidelines.*

11 (B) *All certificated employees of the school district shall be*  
 12 *subject to a system of evaluation and assessment adopted pursuant*  
 13 *to this article, except that this article does not apply to certificated*  
 14 *employees who are employed on an hourly basis in adult education*  
 15 *classes.*

16 (C) *For purposes of this subdivision, a “multiple-measures*  
 17 *evaluation system” is a teacher and principal evaluation system*  
 18 *that uses multiple research-validated approaches to measuring*  
 19 *effectiveness, including the measures specified in this section. A*  
 20 *school district evaluation system developed pursuant to this*  
 21 *subdivision also shall include a quantitative pupil academic*  
 22 *achievement growth component that shall constitute at least 30*  
 23 *percent of the overall teacher and principal effectiveness measure.*

24 (2) *This subdivision applies to the county superintendent of*  
 25 *schools and the employees of schools conducted or maintained by*  
 26 *the county superintendent of schools.*

27 SEC. 2. Section 44955 of the Education Code is amended to  
 28 read:

29 44955. (a) ~~No~~A permanent employee shall *not* be deprived  
 30 of his or her position for causes other than those specified in  
 31 Sections 44907 and 44923, and Sections 44932 to 44947, inclusive,  
 32 and ~~no~~ a probationary employee shall *not* be deprived of his or  
 33 her position for cause other than as specified in Sections 44948 to  
 34 44949, inclusive.

35 (b) (1) Whenever in any school year the average daily  
 36 attendance in all of the schools of a *school* district for the first six  
 37 months in which school is in session shall have declined below  
 38 the corresponding period of either of the previous two school years,  
 39 whenever the governing board determines that attendance in a  
 40 *school* district will decline in the following year as a result of the

1 termination of an interdistrict tuition agreement as defined in  
2 Section 46304, whenever a particular kind of service is to be  
3 reduced or discontinued not later than the beginning of the  
4 following school year, or whenever the amendment of state law  
5 requires the modification of curriculum, and ~~when if~~ in the opinion  
6 of the governing board of the *school* district it shall have become  
7 necessary by reason of any of these conditions to decrease the  
8 number of permanent employees in the *school* district, the  
9 governing board may terminate the services of not more than a  
10 corresponding percentage of the certificated employees of the  
11 *school* district, permanent as well as probationary, at the close of  
12 the school year. Except as otherwise provided by statute, the  
13 services of ~~no a permanent employee may~~ *shall not* be terminated  
14 under the provisions of this section while any probationary  
15 employee, or any other employee with less seniority, is retained  
16 to render a service ~~which said~~ *that the* permanent employee is  
17 certificated and competent to render.

18 ~~In~~

19 (2) *In* computing a decline in average daily attendance for  
20 purposes of this section for a newly formed or reorganized school  
21 district, each school of the district shall be deemed to have been  
22 a school of the newly formed or reorganized district for both of  
23 the two previous school years.

24 ~~As~~

25 (3) *As* between employees who first rendered paid service to  
26 the *school* district on the same date, the governing board shall  
27 determine the order of termination solely on the basis of needs of  
28 the *school* district and the ~~students thereof~~ *pupils of the district*.  
29 Upon the request of any employee whose order of termination is  
30 so determined, the governing board shall furnish in writing no later  
31 than five days prior to the commencement of the hearing held in  
32 accordance with Section 44949, a statement of the specific criteria  
33 used in determining the order of termination and the application  
34 of the criteria in ranking each employee relative to the other  
35 employees in the group. This requirement that the governing board  
36 provide, on request, a written statement of reasons for determining  
37 the order of termination shall not be interpreted to give affected  
38 employees any legal right or interest that would not exist without  
39 such a requirement.

1 (c) Notice of ~~such~~ *the* termination of services shall be given  
2 before the 15th of May in the manner prescribed in Section 44949,  
3 and services of ~~such~~ *these* employees shall be terminated in the  
4 inverse of the order in which they were employed, as determined  
5 by the *governing* board in accordance with the provisions of  
6 Sections 44844 and 44845. In the event that a permanent or  
7 probationary employee is not given the notices and a right to a  
8 hearing as provided for in Section 44949, he or she shall be deemed  
9 reemployed for the ensuing school year.

10 ~~The governing board shall make assignments and reassignments~~  
11 ~~in such a manner that employees shall be retained to render any~~  
12 ~~service which their seniority and qualifications entitle them to~~  
13 ~~render. However, prior to assigning or reassigning any certificated~~  
14 ~~employee to teach a subject which he or she has not previously~~  
15 ~~taught, and for which he or she does not have a teaching credential~~  
16 ~~or which is not within the employee's major area of postsecondary~~  
17 ~~study or the equivalent thereof, the governing board shall require~~  
18 ~~the employee to pass a subject matter competency test in the~~  
19 ~~appropriate subject.~~

20 (d) Notwithstanding subdivision (b), *and except as specified in*  
21 *subdivision (e)*, a school district may deviate from terminating a  
22 certificated employee in order of seniority for ~~either~~ *any* of the  
23 following reasons:

24 (1) The *school* district demonstrates a specific need for personnel  
25 to teach a specific course or course of study, or to provide services  
26 authorized by a services credential with a specialization in either  
27 pupil personnel services or health for a school nurse, and that the  
28 certificated employee has special training and experience necessary  
29 to teach that course or course of study or to provide those services,  
30 which others with more seniority do not possess.

31 (2) For purposes of maintaining or achieving compliance with  
32 constitutional requirements related to equal protection of the laws  
33 *as it applies to pupils*.

34 (3) *On the basis of performance evaluations, if both of the*  
35 *following are met:*

36 (A) *The school district has implemented an evaluation and*  
37 *assessment process that contains all of the elements described in*  
38 *subdivision (f) of Section 44662.*

39 (B) *Employees with superior evaluations are retained over those*  
40 *with inferior evaluations.*

1 (4) *On the basis that the employee is assigned to a schoolsite*  
2 *that has been selected by the governing board for exemption from*  
3 *certificated reductions in force, based upon the needs of the*  
4 *educational program.*

5 (e) *A school district shall not deviate from terminating a*  
6 *certificated employee in order of seniority if the employee has 18*  
7 *months or less from his or her date of retirement, or is on medical*  
8 *leave.*

9 SEC. 3. Section 44955.1 is added to the Education Code, to  
10 read:

11 44955.1. Notwithstanding any other law, a school district,  
12 county office of education, or charter school may assign, reassign,  
13 and transfer teachers and administrators based on effectiveness  
14 and subject matter needs without regard to years of service.

15 SEC. 4. Section 44955.2 is added to the Education Code, to  
16 read:

17 44955.2. A school district that deviates from the order of  
18 seniority for purposes of terminating a certificated employee under  
19 any provision of this chapter shall do so on the basis of one or  
20 more of the items specified in subdivision (d) of Section 44955  
21 and shall not take into consideration whether an employee has  
22 exercised any of the rights guaranteed under Chapter 10.7  
23 (commencing with Section 3540) of Division 4 of Title 1 of the  
24 Government Code.

25 SEC. 5. Section 44956 of the Education Code is amended to  
26 read:

27 44956. (a) ~~Any~~ A permanent employee whose services have  
28 been terminated as provided in Section 44955 shall have the  
29 following rights:

30 (1)

31 (a) For the period of 39 months from the date of ~~such~~ *the*  
32 *termination, any employee who in the meantime has not attained*  
33 *the age of 65 years shall have the preferred right to reappointment,*  
34 *in the order of original employment as determined by the board*  
35 *in accordance with the provisions of Sections 44831 to 44855,*  
36 *inclusive, if the number of employees is increased or the*  
37 *discontinued service is reestablished, with no requirements that*  
38 *were not imposed upon other employees who continued in service;*  
39 *provided, that no probationary or other employee with less seniority*  
40 *shall be employed to render a service which said that the employee*

1 is certificated and competent to render. However, prior to  
 2 reappointing any employee to teach a subject which he or she has  
 3 not previously taught, and for which he or she does not have a  
 4 teaching credential or which is not within the employee's major  
 5 area of postsecondary study or the equivalent thereof, the governing  
 6 board shall require the employee to pass a subject matter  
 7 competency test in the appropriate subject.

8 ~~(2)~~

9 (b) The aforesaid right to reappointment may be waived by the  
 10 employee, without prejudice, for not more than one school year,  
 11 unless the *governing* board extends this right, but ~~such~~ *the* waiver  
 12 shall not deprive the employee of his *or her* right to subsequent  
 13 offers of reappointment.

14 ~~(3)~~

15 (c) Notwithstanding ~~paragraph (1)~~ *subdivision (a)*, a school  
 16 district may deviate from reappointing a certificated employee in  
 17 order of seniority for ~~either~~ *any* of the following reasons:

18 ~~(A)~~

19 (1) The *school* district demonstrates a specific need for personnel  
 20 to teach a specific course or course of study, or to provide services  
 21 authorized by a services credential with a specialization in either  
 22 pupil personnel services or health for a school nurse, and that the  
 23 employee has special training and experience necessary to teach  
 24 that course or course of study, or to provide those services, which  
 25 others with more seniority do not possess.

26 ~~(B)~~

27 (2) For purposes of maintaining or achieving compliance with  
 28 constitutional requirements related to equal protection of the laws  
 29 *as it applies to pupils*.

30 ~~(4) As to any such~~

31 (3) *On the basis of performance evaluations, if both of the*  
 32 *following are met:*

33 (A) *The school district has implemented an evaluation and*  
 34 *assessment process that contains all of the elements described in*  
 35 *subdivision (f) of Section 44662.*

36 (B) *Employees with superior evaluations are given priority for*  
 37 *reappointment over those with inferior evaluations.*

38 (d) *For an employee who is reappointed, the period of his or*  
 39 *her absence shall be treated as a leave of absence and shall not be*  
 40 *considered as a break in the continuity of his or her service, he or*

1 *she* shall retain the classification and order of employment *he or*  
2 *she* had when his *or her* services were terminated, and credit for  
3 prior service under any state or district retirement system shall not  
4 be affected by ~~such~~ *the* termination, but the period of his *or her*  
5 absence shall not count as a part of the service required for  
6 retirement.

7 ~~(5)~~

8 (e) During the period of ~~his~~ *an employee's* preferred right to  
9 reappointment, ~~any such the~~ *employee shall*, in the order of original  
10 employment, *shall* be offered prior opportunity for substitute  
11 service during the absence of any other employee who has been  
12 granted a leave of absence or who is temporarily absent from duty;  
13 provided, that his *or her* services may be terminated upon the  
14 return to duty of ~~said the~~ *the* other employee and that ~~said the~~ *the* substitute  
15 service shall not affect the retention of his *or her* previous  
16 classification and rights. If, in any school year the employee serves  
17 as a substitute in any position requiring certification for ~~any~~ 21  
18 days or more within a period of 60 schooldays, the compensation  
19 the employee receives for substitute service in that 60-day period,  
20 including his or her first 20 days of substitute service, shall *not* be  
21 ~~not~~ less than the amount the employee would receive if he or she  
22 were being reappointed.

23 (f) *Notwithstanding subdivision (e), a school district may deviate*  
24 *from the order of seniority in offering the opportunity for substitute*  
25 *service for any of the following reasons:*

26 (1) *The school district demonstrates a specific need for*  
27 *personnel to teach a specific course or course of study, or to*  
28 *provide services authorized by a services credential with a*  
29 *specialization in either pupil personnel services or health for a*  
30 *school nurse, and the employee has special training and*  
31 *experience, and has demonstrated the competency necessary to*  
32 *teach in a specified grade level or course of study, or to provide*  
33 *those services, that others with more seniority do not possess or*  
34 *are not able to provide.*

35 (2) *For purposes of maintaining or achieving compliance with*  
36 *constitutional requirements related to equal protection of the laws*  
37 *as it applies to pupils.*

38 (3) *On the basis of performance evaluations, if both of the*  
39 *following are met:*

1 (A) *The school district has implemented an evaluation and*  
 2 *assessment process that contains all of the elements described in*  
 3 *subdivision (f) of Section 44662.*

4 (B) *Employees with superior evaluations are offered the*  
 5 *opportunity for substitute service over those with inferior*  
 6 *evaluations.*

7 ~~(6)~~

8 (g) *During the period of the employee’s preferred right to*  
 9 *reappointment, the governing board of the school district, if it is*  
 10 *also the governing board of one or more other school districts,*  
 11 *may assign him the employee to service, which that he or she is*  
 12 *certificated and competent to render, in said one of the other district*  
 13 *or districts; provided, that the school districts. The compensation*  
 14 *he the employee receives therefor may, in the discretion of the*  
 15 *governing board, may be the same as he the employee would have*  
 16 *received had he or she been serving in the school district from*  
 17 *which his the employee’s services were terminated, that his*  
 18 *terminated. The employee’s service in the said other school district*  
 19 *or school districts shall be counted toward the period required for*  
 20 *both state and local retirement, as defined by Section 22102, as*  
 21 *though rendered in the school district from which his the*  
 22 *employee’s services were terminated, and that no permanent*  
 23 *terminated. The employee in said shall not displace any other*  
 24 *permanent employee in the other school district or school districts*  
 25 *shall be displaced by him.*

26 It is the intent of this ~~subsection~~ *subdivision* that the employees  
 27 of a school district, the governing board of which is also the  
 28 governing board of one or more other school districts, shall not be  
 29 at a disadvantage as compared with employees of a unified school  
 30 district.

31 ~~(7)~~

32 (h) *At any time prior to the completion of one year after his the*  
 33 *employee’s return to service, he the employee may continue or*  
 34 *make up, with interest, his or her own contributions to any state*  
 35 *or school district retirement system; for the period of his or her*  
 36 *absence, but it shall not be obligatory on the state or school district*  
 37 *to match such the contributions.*

38 ~~(8) Should he become~~

39 (i) *If the employee becomes disabled or reach reaches retirement*  
 40 *age at any time before his or her return to service, he the employee*

1 shall receive, in any state or *school* district retirement system of  
2 which ~~he~~ *the employee* was a member, all benefits to which he *or*  
3 *she* would have been entitled ~~had such event~~ *if the disability or*  
4 *retirement* occurred at the time of his *or her* termination of service,  
5 plus any benefits ~~he~~ *the employee* may have qualified for thereafter,  
6 as though still employed.

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